

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DD/M+S 73-1982

OGC 73 0877

May 14, 1973

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Draft guidelines implementing section 11 of the
Federal Advisory Committee Act, P.L. 92-463

Draft guidelines implementing section 11 of the Federal Advisory Committee Act, P.L. 92-463, are attached. Pending final issuance, these guidelines will serve as interim agency instructions. Comments should be submitted, in duplicate, to both the Office of Management and Budget, Attention: Committee Management Secretariat, and to the Office of Legal Counsel, Department of Justice, no later than June 15, 1973. Questions concerning these guidelines should be addressed to the Secretariat.



Roy L. Ash
Director

Attachment

GUIDELINES FOR SECTION 11 OF P.L. 92-463

This section provides that copies of transcripts of agency proceedings or advisory committee meetings shall be made available to any person at actual cost of duplication. Section 11 does not impose a requirement that transcripts be made of agency proceedings or advisory committee meetings. Section 11 relates to the availability of transcripts which are prepared as a result of other requirements. Under § 10(b) of the Federal Advisory Committee Act, the availability of transcripts of advisory committee meetings is subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552(b).

A distinction should be made between the cost of transcription services and the cost of making copies of the transcript. The former is to be borne by the Government and not passed on to participants in the proceeding or other interested persons. In pricing the copies of transcripts, "actual cost of duplication" should be understood to mean the price that would be paid to a commercial duplicating firm in a competitive market. This amount may therefore include overhead and profit.

Each agency should assure that transcripts are made available within a reasonable time of the proceeding or meeting. Regarding agency proceedings, the determination of timing (rush, daily, ordinary, etc.) should be based upon

the agency's needs and also the reasonable needs of parties. Consideration should be given to the requirements of a fair hearing and the nature of the proceeding.

Contractual provisions should be used whereby parties or other persons, upon advance request, may obtain copies of transcripts on a basis that will meet reasonable time requirements imposed by the proceedings. There may be situations in which a private party wishes to have a transcript even sooner than that deemed reasonable by the agency. Although the agency has no responsibility to provide such earlier copy, it may wish to provide a mechanism by which the private party may pay the extra expense entailed for such copy (i.e., the incremental cost resulting from the expedited delivery). The agency should thereafter, assure that copies can be obtained at actual cost of duplication by any person within a reasonable time.

Section 11 does not preclude agency activities in handling indigent cases.

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REPLACES FORM 36-8
WHICH MAY BE USED.

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NOTE ATTACHED TO OGC 73-0877